IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITR No.367 of 1995
Date of decision:27.10.2006

The Commissioner of Income tax, Patiala

....Petitioner

versus

M/s Kansal Woollen & Hosiery Mills Pvt. Limited, Ludhiana

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. SK Garg Narwana, Advocate, for the revenue.

JUDGMENT:

Following question of law has been referred for the opinion of this Court by the Income Tax Appellate Tribunal, Chandigarh bench, Chandigarh (for short, 'the Tribunal) arising out of its order dated 14.7.1992 passed in ITA No.1024/Chandi/1986, for the assessment year 1982-83:-

> "Whether on the facts and in the circumstances of the case, the ITAT was right in law in allowing deduction under section 35B in respect of expenses on account of quality control, advertisement, foreign tour etc., when the same does not qualify for deduction under section 35B or rule 6AA of the Income Tax Rules, 1962?

The assessee claimed weighted deduction under section 35B of the Income Tax Act, 1961 (for short, 'the Act') amounting to Rs.97170/- on expenses on quality control, advertisement, foreign tour, export promotion and sample designing. The claim of the assessee was allowed by the appellate authority as well as by the Tribunal. The Tribunal also relied upon its order in the case of the assessee for the previous year.

The matter has been gone into by this Court in ITR No.52 of 1990 **(Commissioner of Income tax (Central) Ludhiana v. M/s. OK Hosiery Mills, Ludhiana)**, decided on 15.9.2006, wherein following judgment of the Hon'ble Supreme Court in **CIT v. Hero Cycles Private Limited and others,** (1997) 228 ITR 463, it was observed:-

> "The Commissioner of Income-tax) Appeals as well as the Tribunal allowed this claim of the assessee without examining the facts of this case. The deduction is permissible if the expenditure is laid out wholly and exclusively for the purposes mentioned in clause (b) of section 35B(1). It is for the assessee to prove that the entire expenditure involved was exclusively for the purposes mentioned in clause (b) of section 35B(1). The Tribunal has also to give a finding as to the entitlement of the assessee with reference to the particulars of clause (b) of section 35B(1). The facts have to be found out and the law has to be applied to those facts. It appears that generally a certain percentage of the claim has been allowed under section 35B without adverting to any of the sub-clauses of clause (b) of section 35B(1). Under those circumstances, we think it fit to set aside the order of the Tribunal and send the matter back to the Tribunal to dispose of it after examining the facts afresh. The appeals are allowed. The order of the High Court as well as the appellate order of the Tribunal is set aside. There will be no order as to costs."

In view of the above, the question of nexus of the deduction with the export will have to be examined by the Tribunal.

Accordingly, we remand the case back to the tribunal for taking a fresh decision on facts in accordance with law.

Reference is disposed of accordingly.

(Adarsh Kumar Goel)
Judge

October 27, 2006
'gs'

(Rajesh Bindal)
Judge